



Laura Bremer
Norman E. Garcia
June 28, 2017
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As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. See, e.g., *EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 *23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 *6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories, which does not actually identify what was refused. Rather, OFCCP responds by providing "categories" of information and indicates the lack of complete response by indicating that Oracle refused to produce "most of the various employer personnel actions requested and "a significant amount of the application materials requested." See Response to Interrogatory No. 21. This says nothing of the fact that OFCCP does not actually answer Interrogatory No. 21 in full which includes the request that OFCCP identify what was requested, when it was requested, when Oracle refused to produce the records, the person that refused to produce and the communications reflecting the refusal.

Topic No. 8

The purpose of this Topic is to understand whether the allegations of discrimination set forth in the Amended Complaint are the result of policies, procedures, processes or tests that the OFCCP alleged resulted in a disparate impact. Neither the articulation of the Topic in the notice nor the articulation set forth above seek information regarding the sufficiency of OFCCP's investigation.

Moreover, Oracle is entitled to know whether the claims of discrimination alleged are disparate impact claims and which policies, procedures, processes or tests are at issue, if any. It is entitled to facts that allow it to formulate a defense, and the defense of a disparate impact claim can be quite distinct from a claim alleging intentional discrimination as the OFCCP knows. Oracle should not be deprived of this basis factual information which is critical to its ability to defend itself.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. There must be some set of facts that OFCCP contends reflects whether the discrimination alleged is the result of some policy, procedure, process or test. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.



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Norman E. Garcia
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As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. See, e.g., *EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 *23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 *6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories. OFCCP has declined to respond to the interrogatory that bears on Topic No. 8. See Interrogatory No. 23.

Topic No. 9

Asking a deponent whether there is anecdotal evidence to support the allegations of discrimination cannot on its face be considered an attempt to question the sufficiency of OFCCP's underlying investigation. It seeks information underlying the allegations made in the Amended Complaint.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. Either there is anecdotal evidence or there is not. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.

As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. See, e.g., *EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 *23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 *6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories. OFCCP has declined to respond to the interrogatory that bears on Topic No. 9. See Interrogatory No. 24.

Topic No. 10

With regard to Topic No. 10, OFCCP simply adopts the objections stated as to all other topics. As a result, Oracle's responses to the OFCCP's objections are incorporated herein.



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June 28, 2017
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Finally, please let us know dates that OFCCP has available to offer witnesses on the topics set forth in the Deposition Notice that is the subject of this letter.

Very truly yours,



Warrington Parker

[REDACTED]

From: Parker, Warrington

Sent: Friday, July 07, 2017 7:50 AM

To: 'Bremer, Laura - SOL' <Bremer.Laura@dol.gov>; 'Pilotin, Marc A - SOL' <Pilotin.Marc.A@DOL.GOV>

Cc: Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>

Subject: OFCCP v. Oracle

I would like to schedule the 30(b)(6) depositions pursuant to Oracle's notice of deposition. We can discuss convenient dates by telephone. Alternatively, I would suggest you email me dates and we can work from there.

Thank you.

Warrington S. Parker III
Partner

Orrick

San Francisco 
T 415 773 5740
wparker@orrick.com



From: Miller, Jeremiah - SOL [mailto:Miller.Jeremiah@dol.gov]
Sent: Friday, July 14, 2017 5:38 PM
To: Parker, Warrington <wparker@orrick.com>
Cc: Pitcher, Jinnifer D. <jpitcher@orrick.com>
Subject: RE: 30(b)(6) Meet and Confer

Hi Warrington,

My apologies for the delay in getting back to you. It will take me some time to be sure I give you our best proposal to resolve the dispute around this notice of deposition. I am hopeful I can provide you with a detailed response/summary by sometime next week.

Thanks again for making the time to speak with me this week.

Jeremiah

From: Parker, Warrington [mailto:wparker@orrick.com]
Sent: Thursday, July 13, 2017 11:25 AM
To: Miller, Jeremiah - SOL
Cc: Pitcher, Jinnifer D.
Subject: 30(b)(6) Meet and Confer

Jeremiah—

I am looking forward to the letter with your proposals from yesterday. I would like to get that by the end of this week. I would like to consult our client. And then I would like to have a proposed schedule for the 30(b)(6) deposition.

Warrington S. Parker III
Partner

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July 20, 2017

Jeremiah Miller
Attorney
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Re: OFCCP v. Oracle, Inc., et al., Case No. 2017-OFC-000006

Dear Mr. Miller:

I write in connection with Oracle's 30(b)(6) deposition notice. First, we are concerned over the seeming delay and reluctance by OFCCP to offer meaningful resolution. At this point, Oracle has provided to OFCCP its meet and confer letter and had a telephonic meet and confer with OFCCP concerning OFCCP's objections to the notice. During the telephonic meet and confer, OFCCP stated that it would place in writing the two proposals made during the telephonic meet and confer on July 12, 2017. Oracle has not yet received those proposals. Furthermore, Oracle has, on multiple occasions—June 28, 2017, July 7, 2017, and July 13, 2017--asked that OFCCP provide dates for the 30(b)(6) deposition. OFCCP has not responded to these requests.

The purpose of this letter is two-fold. First, Oracle wishes to respond to the two proposals made at the telephonic meet and confer. Second, Oracle again requests that OFCCP provide dates for 30(b)(6) depositions by COB on July 24, 2017.

OFCCP raised with regard to all Topics that it had concern that Oracle was trying to depose OFCCP concerning OFCCP's investigation. Oracle stated that the parties may disagree about what OFCCP considers to be questions that concern OFCCP's investigation. However, Oracle noted that the Topics were framed around the specific allegations in the Amended Complaint, which Oracle noted is fair game for a deposition.

Next, OFCCP noted that it was *premature* to conduct a 30(b)(6) deposition because OFCCP lacked facts sufficient to provide a witness. OFCCP questioned whether a 30(b)(6) deposition is proportional to Oracle's needs if the answer to questions would be "I don't know." OFCCP proposed that it would provide Oracle a list of information OFCCP considered necessary to develop the facts of its case and that OFCCP would then provide some time line as to when it would be in a position to offer an expert witness and 30(b)(6) witness or witnesses.



Jeremiah Miller

July 20, 2017

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Oracle rejects this proposal. As noted in the written meet and confer letter and during the telephonic meet and confer, Oracle is entitled to go forward with a deposition. OFCCP has made allegations of discrimination in its Amended Complaint following a year and a half investigation, and OFCCP has stated that Oracle "refused" to provide documents. As to all of these allegations, as Oracle has noted, OFCCP must have facts that support them. If not, OFCCP can so state on the record. Indeed, the Agency thereafter issued a Notice of Violation specifying it had made findings based on the evidence gathered. The Agency's Amended Complaint recites the same allegations as in the NOV and includes the same statistical data.

OFCCP stated that as to Topic No. 7, it would offer to provide information in a written format in lieu of a witness. Oracle responded by stating that it would consider agreeing to this proposal provided that OFCCP agrees to respond fully to Interrogatory No. 21 in Oracle's Amended Interrogatories within a reasonable period of time. Oracle further stated that any such agreement would be without prejudice to Oracle seeking a deposition on the same or a similar topic should Oracle consider that necessary.

Finally, Oracle again requests that OFCCP provides dates for the deposition. Please provide complete responses to Interrogatory No. 21, as well as deposition dates, no later than Monday, July 24, 2017.

Very truly yours,



Warrington Parker

U.S. Department of Labor

Office of the Solicitor
90 7th Street, Suite 3-700
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July 21, 2017

VIA ELECTRONIC MAIL ONLY

Warrington Parker
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105-2669
wparker@orrick.com

Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006,
Follow-Up re: Oracle's May 31, 2017 Rule 30(b)(6) deposition
notice

Dear Warrington:

I am in receipt of your letter from July 20, 2017. I have been working to get you a response; unfortunately I was out of the office yesterday for depositions in another matter and could not respond immediately.

As for your request that OFCCP provide dates for a Rule 30(b)(6) deponent, our position has not changed that such a request is premature. We believe Oracle's insistence on this Rule 30(b)(6) deposition at point in this litigation, where significant information has been withheld by Oracle, is a waste of the parties' resources and will not assist in moving this case forward. We have two proposals, outlined below, which should address your concerns. I am aware that you have pre-emptively rejected the first proposal in your July 20, 2017 letter; but I wanted to make the proposal in writing in the hope that Oracle will attempt to come to a reasonable resolution of this dispute..

Thank you for making the time to meet with me regarding Oracle's May 31, 2017 Rule 30(b)(6) deposition notice ("Notice"). As we discussed, I am writing to confirm the contents of our meeting on July 12, 2017, and to propose a resolution to the parties' dispute about this deposition.

First, thank you for confirming that, at this point, Oracle has only served a single Rule 30(b)(6) notice of deposition, the May 31, 2017 notice.

Second, thank you for confirming that Oracle is not currently seeking an agency representative to provide testimony about the first topic in the Notice: "OFCCP's COMPLIANCE REVIEW of ORACLE's facility in Redwood Shores, California, including the criteria used to select ORACLE for COMPLIANCE REVIEW."

As we discussed, our position is that OFCCP's conclusions regarding Oracle's compliance with Executive Order 11246 resulting from the compliance review are not the subject of this litigation. Rather, OFCCP intends to prove the allegations in the Amended Complaint at the hearing in this matter, establishing Oracle's liability and the extent of damages through evidence and testimony derived from discovery in this matter. Accordingly, our view is that OFCCP's conclusions and the review itself are simply not relevant to any matter that will be before the court at a hearing.

In partial response to our position, you confirmed that the purpose of the Notice was not to explore the compliance review, or to test the sufficiency of the Amended Complaint we filed in this matter. You cited Oracle's agreement to not proceed with the first topic as evidence that Oracle was not attempting to explore the compliance review. You explained that you believed that Oracle was entitled to know the facts supporting the allegations in the Amended Complaint, purportedly the subject of the second through the tenth topics in the Notice.

As we have explained, we consider the Notice to be premature for the purpose of exploring the factual evidence OFCCP intends to use to prove its claims. Because OFCCP intends to prove its case through the results of discovery, and because Oracle has not yet produced key data, OFCCP's answer to the topics in the Notice would be that it did not yet have sufficient information to respond. I expressed our position that we were entitled to allege violations of the Executive Order with the expectation that we would prove them through information obtained during discovery, like any civil plaintiff.

You indicated that, if OFCCP's response to these topics were that it did not yet have information supporting the allegations, Oracle might move for summary judgment on those allegations. As I explained, OFCCP would resist any such motion on the basis that Oracle possessed the information necessary for OFCCP to respond, and had not yet produced that information. *See* Fed. R. Civ. P. 56(d).

Accordingly, we do not think that a Rule 30(b)(6) deposition of OFCCP is proper at this time. A deponent testifying on behalf of OFCCP regarding the remaining topics in the Notice would have no additional¹ non-privileged information to share regarding the (irrelevant) compliance review. Such a deponent would also only report that additional information from Oracle is necessary before the facts supporting the allegations in the Amended Complaint can be fully identified. In short, a deposition consistent with the Notice at this time would be a waste of the parties resources, and not proportional to the needs of the case.

However, in light of Judge Larsen's instruction that the parties should make every effort to resolve their discovery disputes, I proposed some solutions to this impasse. I will lay these proposals out in more detail below.

¹ Beyond the information in the Amended Complaint and in OFCCP's document production and responses to written discovery. It is our position that the information provided in the Amended Complaint and through discovery will provide all of the bases currently known for OFCCP's claims.

First, OFCCP does not dispute that Oracle is entitled to fact discovery regarding how OFCCP will prove the allegations in its Amended Complaint. Consistent with the scheduling order in this matter, OFCCP will make an expert witness available to provide statistical or other bases for its allegations. This of course assumes that Oracle will comply with its discovery obligations to provide the information solely in its possession necessary for such expert analysis.

OFCCP will also make available Agency fact witnesses, once they are identified (as required by the Court's order) to provide non-expert testimony regarding the basis for the allegations in the Amended Complaint.

Our timing for providing these deponents is entirely dependent on Oracle's production of information. We have offered a production schedule to Oracle that would permit OFCCP to fully answer Oracle's questions about the basis for the allegations in the Amended Complaint prior to the close of expert discovery.

Second, with respect to the seventh topic,² we would be willing to more fully answer Oracle's amended Request for Production No. 21,³ even though it would require OFCCP to answer more than 25 interrogatories (including subparts). OFCCP would be willing to provide a table identifying (1) the request made, (2) the date the request was made, (3) what Oracle failed to produce during the compliance review with respect to each request. In exchange, Oracle would agree not to pursue the seventh topic in the Notice.

In sum, we do not think that a Rule 30(b)(6) deposition of OFCCP at this point in the litigation would be worth the effort and expense in light of the ultimate issues at hearing in this matter. We hope that you will consider our proposals and we can find a way to resolve this matter.

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² Topic seven reads "The records, materials and evidence that Oracle failed or refused to produce as alleged in Paragraphs 12 and 13 of the Amended Complaint, including:

- a. the records, materials and evidence sought by OFCCP;
- b. the information sought by OFCCP that were contained in the records, materials and evidence;
- c. the date(s) that OFCCP requested the records, materials and evidence;
- d. the date(s) of ORACLE's refusal;
- e. ORACLE's reasons, if any, for refusing to produce or provide the records, materials and evidence;"

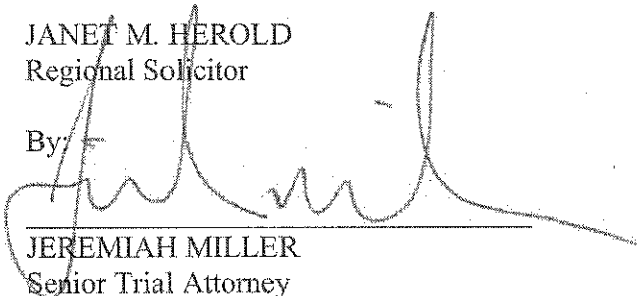
³ Interrogatory number 21 reads "State all facts that support the allegation in Paragraph 12 and 13 of the Amended Complaint that YOU requested "various records" that Oracle "refused to produce," including a description of the specific records YOU requested, the date(s) on which YOU requested the records, the date(s) on which YOU contend that Oracle refused to produce those records, the PERSON that refused to produce the records, and the COMMUNICATION reflecting the refusal."

Warrington Parker
July 21, 2017
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Thank you,

JANET M. HEROLD
Regional Solicitor

By



JEREMIAH MILLER
Senior Trial Attorney



July 24 2017

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Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006

Dear Mr. Miller:

I write in response to your letter of July 21, 2017. Oracle is unwilling to agree to the proposals set forth in your letter. Many of the reasons why are set forth in Oracle's meet and confer letter. They were reiterated during our telephonic meet and confer. They are mentioned again in my letter of July 20, 2017.

To state them succinctly, OFCCP investigated Oracle for over a year and a half. It then brought a complaint. As stated, Oracle is entitled to know the facts that underlie that complaint.

As for OFCCP's contention that the deposition is premature, OFCCP has stated that it does not have facts necessary to provide a 30(b)(6) deposition. This is an objection repeated in OFCCP's objections to interrogatory. And OFCCP contends it should be treated like any other civil plaintiff.

The fact is that Oracle *is* treating OFCCP as it would a civil plaintiff. Oracle is treating OFCCP as a civil plaintiff that has in fact engaged in extensive unilateral discovery for over a year and half period who then brings a complaint containing very specific facts and statistics in alleging discrimination.

Thus, Oracle should not have to wait to depose witness(es) including on matters relating to the statistics. Indeed, in responding to interrogatories, OFCCP cites to the complaint, including the statistics referenced therein, as providing the factual basis for OFCCP's various claims. Therefore, Oracle should not have to wait to take these depositions.



Jeremiah Miller
July 24, 2017
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Oracle also cannot accept your proposal regarding Topic No. 7. While the information OFCCP would provide in connection with its proposal is part and parcel of Interrogatory No. 21, the information that OFCCP says it will provide does not respond to Interrogatory No. 21 fully. In fact, OFCCP's proposal that it will "more fully answer" Interrogatory No. 21—as opposed to a simple statement that OFCCP will respond to Interrogatory No. 21—reflects this fact.

In addition to knowing what documents were requested, the date they were requested and what Oracle failed to produce, Oracle is entitled to know (1) the documents requested by OFCCP that Oracle "refused" to provide as alleged in the Amended Complaint, (2) who refused to provide the documents, (3) what communication reflects the refusal, (4) the date of refusal, and (5) what actions or positions were taken by OFCCP in connection with any alleged refusal by Oracle to provide information. In other words, Oracle would expect a complete answer to Interrogatory No. 21, not later than July 31, 2017.

If OFCCP agrees, and does answer Interrogatory No. 21 fully, then Oracle will remove Topic No. 7 off the table. As mentioned, Oracle will remove it without prejudice to serving the same Topic or a revised Topic, which revision would take into account OFCCP's response to Interrogatory No. 21.

Very truly yours,



Warrington Parker

From: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>
Sent: Thursday, August 03, 2017 4:20 PM
To: Parker, Warrington
Cc: Siniscalco, Gary R.; Connell, Erin M.; Kaddah, Jacqueline D.; Pilotin, Marc A - SOL; Bremer, Laura - SOL; Eliasoph, Ian - SOL; Garcia, Norman - SOL
Subject: RE: OFCCP v. Oracle

Hi Warrington,

Thanks for taking the time to speak with me today. As we discussed, OFCCP is prepared to offer a witness for deposition on Topic No. 7. However, in order to find the person most knowledgeable, we need to reach out to personnel within OFCCP who are unavailable for the remainder of the week. We will be able to offer some dates for that individual once we have an opportunity to meet internally next week.

With the respect to Topic Nos. 2-6 and 8-10, our position has not changed that a deposition at this time is premature.

We will be in touch as soon as possible with potential dates.

Thank you,
Jeremiah

From: Parker, Warrington [mailto:wparker@orrick.com]
Sent: Thursday, August 03, 2017 1:14 PM
To: Miller, Jeremiah - SOL
Cc: Siniscalco, Gary R.; Connell, Erin M.; Kaddah, Jacqueline D.; Pilotin, Marc A - SOL; Bremer, Laura - SOL; Eliasoph, Ian - SOL; Garcia, Norman - SOL
Subject: OFCCP v. Oracle

Jeremiah—

Based on our meet and confer, OFCCP will offer a witness on Topic No. 7. As for the remaining topics, no witness will be offered.

I understand that you will consider dates for the witness. The ALJ has asked that we complete our meet and confer by tomorrow, August 4. In that regard, we would need a proposed date from OFCCP by tomorrow. It may be that we have disagreement that the date proposed is too far out. Our goal is to take the deposition before end of August.

Thank you.

Warrington S. Parker III
Partner

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